

Hearing Date: July 6, 2000
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

**RANDALL'S ISLAND FAMILY
GOLF CENTERS, INC., et al.,**

Debtors.

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Chapter 11

Case Nos. 00-41065
Through 00-41196 (SMB)
(Jointly Administered)

**MOTION OF TRINITY MILLS MIDWAY PARTNERS,
LTD. FOR ORDER PURSUANT TO §362(d) OF THE
BANKRUPTCY CODE VACATING THE AUTOMATIC STAY**

**TO THE HONORABLE STUART M. BERNSTEIN,
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

Trinity Mills-Midway Partners, Ltd. ("Trinity Mills"), by its co-counsel, Blank Rome Tenzer Greenblatt LLP and Hughes & Luce, L.L.P., as and for its Motion for entry of an order, pursuant to §362(d) of Title 11 of the United States Code (the "Bankruptcy Code"), vacating the automatic stay with respect to the debtor GBGC Family Golf Centers, Inc. (the "Debtor")¹ to permit Trinity Mills to proceed with its State Court Eviction Proceeding (as defined herein), respectfully represents:

INTRODUCTION

1. On May 4, 2000 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

¹ GBGC Golf Centers, Inc. was formerly known as Golden Bear Golf Centers, Inc., the nominal tenant under the Ground Lease (as defined below).

2. By order of this Court dated May 4, 2000, the Debtor's case was consolidated with one hundred thirty (130) related Chapter 11 cases for the purpose of joint administration.

3. The Debtor remains in possession and management of its property as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. On May 12, 2000, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors in the Debtor's Chapter 11 case.

5. The Debtor was the lessee of the premises located at 538 Golden Bear Drive, Carrollton, Texas (the "Premises").

6. Trinity Mills is a Texas limited partnership doing business in Dallas, Texas. Trinity Mills is the owner and lessor of the Premises .

7. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the District Court (S.D.N.Y. July 10, 1984) (Ward, Acting C.J.). The statutory predicate for the relief sought herein is § 362 of the Bankruptcy Code. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G).

BACKGROUND

The Ground Lease

8. On or about March 1, 1995, Trinity Mills, as landlord, and Dallas Highlander, Ltd. as tenant, entered into a Ground Lease (the "Ground Lease") with respect to the Premises. A copy of the Ground Lease is annexed hereto as Exhibit "A".

9. On or about September 13, 1996, Dallas Highlander, Ltd., as assignor, and Golden Bear Golf Centers, Inc., now known as GBGC Family Golf Centers, Inc. (the "Debtor"),

as assignee, entered into the First Amendment to Ground Lease and Assignment of Tenant's Interest in Ground Lease and Landlord Estoppel, a copy of which is annexed hereto as Exhibit "B", whereby Dallas Highlander, Ltd. assigned its interest in the Ground Lease to the Debtor.

10. On or about June 16, 1998, Family Golf Centers, Inc. ("Family Golf") and Golden Bear Golf, Inc. entered into a Stock Purchase Agreement whereby Family Golf purchased from Golden Bear Golf, Inc. all of the outstanding shares of the Debtor.² In connection with the Stock Purchase Agreement, Family Golf and Golden Bear Golf, Inc. entered into a Sublicense Agreement whereby Golden Bear Golf, Inc. granted Family Golf a license to use the "Golden Bear" name in connection with its golf centers.

11. On or about July 20, 1998, Golden Bear Golf, Inc. and Family Golf entered into a letter agreement whereby, among other things, Family Golf agreed and acknowledged that it would continue to use the "Golden Bear" name in connection with the Premises.

Debtor's Ground Lease Defaults

12. The Debtor has continually breached its obligations under the terms of the Ground Lease and failed to cure such breaches.

13. Pursuant to Article 15 of the Ground Lease, the Debtor's rights and obligations under the Ground Lease include compliance with the Declaration of Covenants, Restrictions and Development Standards Applicable to Texas Highlands dated July 6, 1993 ("CC&R's"), a copy of which is annexed to the Ground Lease as Exhibit F.

² Family Golf is also a debtor in the above-captioned jointly administered Chapter 11 cases. Therefore, to the extent that the Court finds that the automatic stay must be vacated with respect to Family Golf in order for Trinity Mills to proceed with the State Court Eviction Proceeding against the Debtor, Trinity Mills respectfully requests that this Motion be deemed to seek such relief against Family Golf as well.

14. The Debtor failed to comply with the CC&R's in that the Debtor failed (a) to maintain common area landscaping and (b) to install and assume responsibility for irrigation of the parkway and landscaping improvements, in violation of Article VIII sec. 2(g)(3) and (5) and Article IX sec. 1 of the CC&R's.

15. The Debtor failed to comply with the CC&R's in that the Debtor stored certain raw material and maintenance equipment in an area of the Premises without adequate screening and without permission of Trinity Mills in violation of Article VIII secs. 1(a)(4) and 2(h)(2) and (3) of the CC&R's.

16. Pursuant to Article 12 of the Ground Lease, the Debtor was required to maintain the Premises and the leasehold improvements thereon. The Debtor failed to maintain the leasehold improvements on the Premises, including, but not limited to, (a) adequate irrigation and maintenance of driving range improvements and landing area; (b) landscaping improvements; and (c) building leasehold improvements in violation of Article 12 of the Ground Lease.

17. Pursuant to Article 14, paragraph 14.1 of the Ground Lease, the Debtor could not enter into a franchise or licensing agreement without the consent of Trinity Mills. Trinity Mills has only consented to the franchise/licensing arrangement between Family Golf and Golden Bear Golf, Inc. Because Family Golf's license to use the name Golden Bear has been terminated, the Debtor is in breach of and can no longer comply with Article 14, paragraph 14.1 of the Ground Lease.

Default Notices

18. On March 29, 1999, Trinity Mills advised the Debtor that it was in default under the Ground Lease in that it failed to properly store certain raw material and equipment (the

"First Notice"). The Debtor did not respond to the First Notice, a copy of which is annexed hereto as Exhibit "C".

19. On May 10, 1999, Trinity Mills again advised the Debtor that it was in default under the Ground Lease in that it failed to properly store certain raw material and equipment (the "Second Notice"). The Debtor did not respond to the Second Notice, a copy of which is annexed hereto as Exhibit "D".

20. On August 2, 1999, Trinity Mills sent a third notice of default to the Debtor advising it of its continued default under the Ground Lease in failing to properly store certain raw material and equipment (the "Third Notice"). The Debtor failed to respond to the Third Notice, a copy of which is annexed hereto as Exhibit "E".

21. On August 27, 1999, Trinity Mills sent an official Notice of Default to the Debtor advising it that, in addition to its failure to adequately store certain raw material and maintenance equipment, the Debtor failed to maintain common area landscaping and certain leasehold improvements, and failed to install and assume responsibility for irrigation of the parkway and landscaping improvements (the "Notice of Default"). A copy of the Notice of Default is annexed hereto as Exhibit "F".

22. In or about October, 1999, A.A. Bragg Company ("A.A. Bragg") conducted a building inspection and Precision Landscape Management, Inc. ("Precision") conducted a landscape inspection on the Premises.

23. A.A. Bragg and Precision prepared evaluations of the Premises' condition itemizing various Ground Lease violations, including, but not limited to, the above-mentioned Ground Lease violations. The landscape and building evaluations were provided to the Debtor

on October 8, 1999. A copy of A.A. Bragg's building evaluation is annexed hereto as Exhibit "G" and a copy of Precision's landscape evaluation is annexed hereto as Exhibit "H".

24. Although the Debtor denied it was in default under the Ground Lease, by its own conduct, the Debtor has repeatedly acknowledged such defaults. By correspondence dated September 3, 1999, November 10, 1999 and November 18, 1999, copies of which are annexed hereto as Exhibit "I", the Debtor advised Trinity Mills of its proposed actions to remedy the existing defaults under the Ground Lease.

25. Although the Debtor has acknowledged its violations under the Ground Lease, the Debtor has still failed to cure the outstanding defaults.

26. On March 30, 2000, one (1) year after Trinity Mills sent the First Notice of default to the Debtor, Trinity Mills re-inspected the Premises to determine whether the Debtor cured the existing defaults under the Ground Lease. The re-inspection showed that the Debtor did not cure the violations under the Ground Lease and continued to be in default.

Termination of Ground Lease

27. Article 19, paragraph 19.2 of the Ground Lease states in pertinent part that:

"In the event of any such Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, including, without limitation, injunction, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate...."

28. After one (1) year of numerous (a) requests to cure violations under the Ground Lease; (b) notices of default under the Ground Lease; and (c) Ground Lease termination warnings, by letter dated March 30, 2000, Trinity Mills terminated the Ground Lease (the "Termination Notice"). A copy of the Termination Notice is annexed hereto as Exhibit "J".

29. The Termination Notice states that "In accordance with Article 19, paragraph 19.2 of the Ground Lease, notice is hereby given of Landlord's election to terminate the Ground Lease, effective immediately."

30. By virtue of the Termination Notice, the Ground Lease was terminated pursuant to both Texas Law and the terms of the Ground Lease.

31. At the time of the Termination Notice, many of the Ground Lease defaults had existed for a period of over one (1) year and still had not been cured.

32. On April 21, 2000, Trinity Mills provided the Debtor with a notice to vacate the Premises within 3 days of receipt of such notice (the "Notice to Vacate"). A copy of the Notice to Vacate is annexed hereto as Exhibit "K". The Notice to Vacate provided that "If Tenant does not vacate the premises on or before such date, Landlord will institute a forcible detainer suit against Tenant . . ."

33. After delivery of both the Termination Notice and the Notice to Vacate, although the Debtor claimed it was not in default under the Ground Lease, Trinity Mills' March 30, 2000 inspection of the Premises revealed that many of the Ground Lease violations that the Debtor had acknowledged had still not been addressed.

State Court Eviction Proceeding

34. On May 3, 2000, Trinity Mills filed a forcible entry and detainer action against the Debtor in the Justice Court of Dallas County entitled Trinity Mills - Midway Partners, Ltd. v. Golden Bear Golf Centers, Inc., No. JE00-00097M (the "State Court Eviction Proceeding") seeking to evict the Debtor from the Premises.

35. On May 4, 2000, the Debtor filed for relief under Chapter 11 of the Bankruptcy Code.

RELIEF REQUESTED

36. By this Motion, Trinity Mills seeks relief from the automatic stay to permit Trinity Mills to proceed with the State Court Eviction Proceeding.

“Cause” Exists to Grant Trinity Mills Relief from the Automatic Stay

37. As more fully discussed in the accompany memorandum of law, “cause” exists under § 362(d)(1) of the Bankruptcy Code to grant Trinity Mills relief from the automatic stay.

38. Section 362(d) of the Bankruptcy Code provides, in relevant part:

- (d) On the request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
 - (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

11 U.S.C. § 362(d)(1).

39. “Cause” exists to grant Trinity Mills relief from the automatic stay because the Premises are not property of the Debtor’s estate. Pursuant to Article 19, paragraph 19.2 of the Ground Lease, and under applicable Texas law, the Ground Lease was effectively terminated on March 30, 2000. Because the Ground Lease was effectively terminated pre-petition, the Debtor had no interest in the Premises as of the Petition Date. Therefore, the Premises are not property of the Debtor’s estate.

40. “Cause” exists to grant Trinity Mills relief from the automatic stay because the Debtor’s legal rights to the Premises ceased when the Ground Lease was terminated on March 30, 2000. The Debtor is in possession of the Premises only as a tenant at sufferance and has no legal right to occupy the Premises.

41. “Cause” exists to grant Trinity Mills relief from the automatic stay because the Ground Lease cannot be assumed by the Debtor. A lease which terminated pre-petition is not resurrected by the filing of a bankruptcy case. The Debtor’s ability to assume the Ground Lease terminated on March 30, 2000.

42. Because the Ground Lease was validly terminated pre-petition and is not property of the Debtor’s estate, the Debtor may not assume the Ground Lease in its Chapter 11 case. Thus, “cause” exists under § 362(d)(1) of the Bankruptcy Code to allow Trinity Mills to proceed with its State Court Eviction Proceeding and obtain possession of its Premises.

43. Based upon the foregoing, the automatic stay should be vacated to allow Trinity Mills to proceed with its State Court Eviction Proceeding to avoid any further prejudice to Trinity Mills.

NOTICE

44. Notice of this Motion has been given to (i) the Debtor and its counsel, (ii) the Office of the United States Trustee, (iii) all those who have filed a notice of appearance, and (iv) the Debtor’s creditors. Trinity Mills submits that such notice is sufficient under the circumstances.

NO PRIOR REQUEST

45. No prior request for the relief requested by this Motion has been made to this or any other Court.

WHEREFORE, Trinity Mills respectfully requests (a) entry of an order, substantially in the form annexed hereto as Exhibit "L", vacating the automatic stay to allow Trinity Mills to proceed with its State Court Eviction Proceeding, and (b) such other and further relief as is just and proper.

Dated: New York, New York
June 23, 2000

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